

IN THE UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF CALIFORNIA

|                              |   |                            |
|------------------------------|---|----------------------------|
| RIVERBEND RANCH GOLF COURSE, | ) | No. CV-F-97-5550 REC/DLB   |
| et al.,                      | ) |                            |
|                              | ) | ORDER DENYING DEFENDANTS'  |
|                              | ) | MOTION FOR ATTORNEYS' FEES |
| Plaintiff,                   | ) | AND EXPENSES               |
|                              | ) |                            |
| vs.                          | ) |                            |
|                              | ) |                            |
| COUNTY OF MADERA, et al.,    | ) |                            |
|                              | ) |                            |
|                              | ) |                            |
| Defendant.                   | ) |                            |
|                              | ) |                            |
|                              | ) |                            |

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On June 27, 2005, the court heard defendants' Motion for Attorneys' Fees and Expenses.

Upon due consideration of the record and the arguments of the parties, the court issues its ruling as set forth herein.

Defendants County of Madera and Leonard Garoupa move the court for an award of attorneys' fees and expenses in the amount of \$321,000 pursuant to 42 U.S.C. § 1988 and Rule 11, Federal Rules of Civil Procedure.

Defendants prevailing in civil rights actions may be awarded

1 attorney's fees only upon a finding that the plaintiff's action  
2 was frivolous, unreasonable, or without foundation, even though  
3 not brought in subjective bad faith. Christianburg Garment Co.  
4 v. EEOC, 434 U.S. 412, 421 (1978). The plaintiff's action must  
5 be meritless in the sense that it is groundless or without  
6 foundation. The fact that a plaintiff may ultimately lose his  
7 case is not in itself a sufficient justification for the  
8 assessment of fees. Hughes v. Rowe, 449 U.S. 5, 14-15 15 (1980).  
9 An action is frivolous if it lacks an arguable basis in law or  
10 fact. Neitzke v. Williams, 490 U.S. 319, 325 (1989).

11 Rule 11(b), Federal Rules of Civil Procedure, provides in  
12 pertinent part:

13 By presenting to the court (whether by  
14 signing, filing, submitting, or later  
15 advocating) a pleading, written motion, or  
16 other paper, an attorney ... is certifying  
that to the best of the person's knowledge,  
information, and belief, formed after inquiry  
reasonable under the circumstances, -

17 (1) it is not being presented for any  
18 improper purpose, such as to harass or to  
cause unnecessary delay or needless increase  
19 in the cost of litigation;

20 (2) the claims, defenses, and other legal  
contentions therein are warranted by existing  
law or by a nonfrivolous argument for the  
21 extension, modification, or reversal of  
existing law or the establishment of new law;

22 (3) the allegations and other factual  
23 contentions have evidentiary support or, if  
specifically so identified, are likely to  
24 have evidentiary support after a reasonable  
25 opportunity for further investigation or  
discovery ....

26 The Ninth Circuit has explained the standards governing

1 resolution of a motion for sanctions pursuant to Rule 11(b)(2) as  
2 follows:

3 It is obvious from the text of the Rule that  
4 the pleader need not be correct in his view  
5 of the law. Thus the granting of a motion to  
6 dismiss the complaint for failure to state a  
7 claim, or the granting of a summary judgment  
8 against the pleader is not dispositive of the  
9 issue of sanctions. The pleader, at a  
10 minimum, must have a 'good faith argument'  
11 for his or her view of what the law is, or  
12 should be. A good faith belief in the merit  
13 of a legal argument is an objective condition  
14 which a competent attorney attains only after  
15 'reasonable inquiry.' Such inquiry is that  
16 amount of examination into the facts and  
17 legal research which is reasonable under the  
18 circumstances of the case. Of course, the  
19 conclusion drawn from the research undertaken  
20 must itself be defensible. Extended research  
21 alone will not save a claim that is without  
22 legal or factual merit from the penalty of  
23 sanctions.

14 ... [W]e affirm that Rule 11 sanctions shall  
15 be assessed if the paper filed in district  
16 court and signed by an attorney ... is  
17 frivolous, legally unreasonable, or without  
18 factual foundation, even though the paper was  
19 not filed in subjective bad faith.

18 Zaldivar v. City of Los Angeles, 780 F.2d 823, 830-831 (9<sup>th</sup> Cir.  
19 1996). "The word 'frivolous' does not appear anywhere in the  
20 text of the Rule; rather, it is a shorthand that this court has  
21 used to denote a filing that is both baseless and made without a  
22 reasonable and competent inquiry." Townsend v. Holman Consulting  
23 Corp., 929 F.2d 1358, 1362 (9<sup>th</sup> Cir. 1990). Rule 11 sanctions  
24 may be imposed even if a pleading is frivolous only in part.  
25 Burnette v. Godshall, 828 F.Supp. 1439, 1447 (N.D.Cal. 1993),  
26 aff'd, 72 F.3d 766 (9<sup>th</sup> Cir. 1995).

1 The court concludes that defendant has not established that  
2 it is entitled to attorneys' fees under either Section 1988 or  
3 Rule 11.

4 Defendant asserts that plaintiff has employed dilatory  
5 tactics by not being responsive to discovery, not providing the  
6 records evidencing the fact that Riverbend Ranch had conveyed  
7 title to the property prior to commencement of the action,  
8 repeatedly sought continuances, and cited totally irrelevant  
9 cases.

10 However, plaintiff has been sanctioned for certain of the  
11 delays in this action. Furthermore, delays in providing  
12 discovery and seeking continuances is not a basis for concluding  
13 that the standards under Section 1988 or Rule 11 have been  
14 violated.

15 Furthermore, resolution of the causes of action for denial  
16 of substantive and procedural due process and equal protection  
17 was based on hotly disputed legal and factual issues with respect  
18 to which the court issued lengthy rulings. While the court did  
19 not accept plaintiff's legal or factual positions, the court  
20 cannot agree with defendant that the cases cited by plaintiff in  
21 support of their various positions were "totally irrelevant".  
22 The court cannot conclude that those causes of action were  
23 frivolous or baseless even though plaintiff did not prevail.  
24 Plaintiff did prevail in part on the Tenth Claim for Relief for  
25 declaratory judgment. With regard to the issues concerning  
26 Riverbend's inaccurate pleading that it owned the golf course,

1 while this incorrect pleading resulted in additional discovery  
2 and motions concerning the standing of Riverbend Ranch to bring  
3 this lawsuit, the court eventually ruled that Riverbend Ranch had  
4 standing because of contractual terms. Even if Riverbend's  
5 Complaint had been correctly pleaded, there still would have been  
6 discovery and issues concerning standing. Therefore, although  
7 there may be argued that a violation of Rule 11 occurred with  
8 regard to the allegation in the Complaint concerning ownership,  
9 it cannot be said that additional attorneys' fees were incurred  
10 because of this inaccuracy. It is clear that nine causes of  
11 action were abandoned by plaintiff at summary judgment. The  
12 causes of action for violation of substantive and procedural due  
13 process and equal protection under California law necessarily had  
14 to be conceded after the court ruled in defendant's favor with  
15 respect to those alleged violations under federal law. Six  
16 causes of action were abandoned by plaintiff without any attempt  
17 to support them on summary judgment. Two of those causes of  
18 action, the Thirteenth and the Fourteenth, were allowed to be  
19 included in an amended complaint after plaintiff made  
20 representations to the court in support of leave to amend to  
21 include them. When questioned at oral argument about these six  
22 causes of action, current counsel for plaintiff essentially  
23 stated that he did not know why these causes of action were  
24 included or why they were abandoned at summary judgment.  
25 Nonetheless, the court concludes that defendants are have not  
26 shown that attorneys' fees should be awarded for the fees

1 incurred in defending these causes of action, given the court's  
2 conclusion that fees should not be awarded in the case in  
3 general. The court is frequently faced with causes of action  
4 alleged because it is anticipated that discovery will support the  
5 allegations. The court is frequently faced with statements of  
6 non-opposition to specific claims at summary judgment. Given the  
7 circumstances of this action, including the number of different  
8 attorneys who represented plaintiffs, the court cannot conclude  
9 that the inclusion of these causes of action justifies an award  
10 of attorneys fees under Rule 11 or Section 1988.

11 ACCORDINGLY:

12 1. Defendants' Motion for Attorneys' Fees and Expenses is  
13 denied.

14 IT IS SO ORDERED.

15 **Dated: December 29, 2005**  
668554

**/s/ Robert E. Coyle**  
UNITED STATES DISTRICT JUDGE